

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.27004 OF 2006

Between:

K. Sanjeeva Rao

...Petitioner

AND

Union of India, rep., by its
General Manager, South Central Railway,
Secunderabad and three others

...Respondent

: O R D E R :

Counsel for the petitioner : Shri G. Sanyasi Rao

Counsel for the respondents : Smt Pushpinder Kaur

12th March, 2007

Per G.S. Singhvi, C.J.

Having failed to persuade the Central Administrative Tribunal,
Hyderabad Bench (for short, 'the Tribunal') to entertain his prayer for

condonation of 739 days delay in filing application under Section 19 of the Administrative Tribunals Act, 1985 (for short, 'the Act'), the petitioner has filed this petition under Article 226 of the Constitution of India for quashing order dated 7-12-2006 passed by the Tribunal in M.A. No.483 of 2006 and O.A. (SR) No.2434 of 2006.

The petitioner's father, Sri K. Krishna Rao, who was serving as Assistant Sub-Inspector in Railway Protection Force, South Central Railway, died on 7-7-1996. Soon thereafter, the petitioner's mother represented to the competent authority for his appointment on compassionate grounds. He was selected for appointment as Trainee Artisan, but the medical board declared him unfit on the ground that he was having L.V. Dysfunction. The petitioner obtained contra medical opinion from Osmania General Hospital and Durgabai Deshmukh Hospital and then filed O.A.No.796 of 2002 for issue of a direction to the respondents to appoint him on compassionate grounds. The same was disposed of by the Tribunal vide its order dated 23-6-2003 by directing fresh consideration of the petitioner's case in accordance with the report of medical re-examination. Thereafter, the petitioner's case was referred to the medical board, which again opined that he was unfit for all categories of appointment in the Railways. In view of the adverse opinion of the medical board, Senior Divisional Personnel Officer, South Central Railway, vide his letter dated 13-11-2003 informed the petitioner that he cannot be considered for appointment in the Railways.

After one year and ten months of the rejection of his claim, the petitioner submitted an application before the Pension Lok Adalat on 8-9-2005, but the competent authority again declined to entertain his claim. The petitioner was informed about this by the Divisional Personnel Officer, South Central Railway vide his letter No.CP/175/Con/161/97/A, dated 22-11-2005.

The petitioner challenged the rejection of his claim for

appointment on compassionate ground by filing another application under Section 19 of the Act. Since the application was filed after expiry of the period of limitation, the same was registered as O.A. (SR) No.2434 of 2006. The petitioner also filed M.A.No.483 of 2006 for condonation of 739 days delay in filing the application. The Tribunal rejected the petitioner's prayer for condonation of delay by observing that the explanation given by him is not satisfactory. As a sequel to this, the Tribunal dismissed the original application as barred by time. Paragraph 3 of the Tribunal's order, which contains the reasons for its decision, reads as under:

“3. One of the grounds, as taken by the applicant in the M.A., for the delay in approaching this Tribunal is that the applicant was waiting for the outcome of the representation, which has been made by the applicant to the Pension Adalat. The other explanation given by the applicant is his financial problem. I find that the applicant has submitted his representation to the Pension Adalat almost two years after the letter was issued by the 3rd respondent on 13-11-2003 and there is no explanation for that approaching the Tribunal in this M.A. Since the very object to provide compassionate appointment is to give immediate relief to the family of the deceased employee, who expired suddenly in harness and the Hon'ble Supreme Court has time and again said that the prayer for compassionate appointment cannot be made and entertained at any time, I am not convinced with the explanation given by the applicant in approaching this Tribunal to condone the delay of 739 days in approaching this Tribunal questioning the order dated 13-11-2003. The M.A. is, therefore, dismissed with no order as to costs. As the M.A. is dismissed, the O.A.SR.No.2344/2006 also stands dismissed.”

Shri G. Sanyasi Rao argued that the approach adopted by the Tribunal in dealing with the petitioner's application for condonation of delay is hyper-technical and the reasons assigned by it for refusing to condone the delay are legally untenable. He emphasized that in terms of order dated 23-6-2003 passed by the Tribunal in O.A.No.796 of 2002, the petitioner had acquired a right to be appointed on

compassionate grounds and the delay of 739 days in filing the second O.A. could not have been made a ground for denying relief to him. Learned counsel then referred to orders dated 31-3-2004 and 5-6-2004 passed by the Division Benches of this Court in Writ Petition No.29305 of 1997 – **D. Samuel Johan v. General Manager, SC Railways, Secunderabad and others** and Writ Petition No.22154 of 2005 – **C.S. Ranganatha Rao v. The Asst. Divisional Mechanical Engineer (Carriage & Wagon), South Central Railway, Secunderabad Division, Secunderabad and others** and submitted that in view of those orders, the order under challenge may be set aside and the Tribunal be directed to decide the application on merits.

We have given serious thought to the submissions of the learned counsel, but have not felt persuaded to agree with him. Rather, after having given our most anxious consideration to the entire matter, we are convinced that the reason assigned by the Tribunal for declining to condone the delay of 739 days in filing application under Section 19 do not suffer from an error of law apparent on the face of the record warranting interference by this Court under Article 226 of the Constitution.

It is settled law that a writ of certiorari can be issued against an order passed by the Subordinate Court or Tribunal or a quasi-judicial authority if the same is without jurisdiction or is in excess of the jurisdiction or is violative of the rules of natural justice or is vitiated by an error of law apparent on the face of the record. To put it differently, the High Court can issue a writ of certiorari if it is found that the order under challenge has been made by the Court or Tribunal or quasi-judicial authority which did not have the jurisdiction to pass such order or where such Court, Tribunal or Authority has failed to exercise the jurisdiction vested in it or where the action complained of has been taken in disregard of rules of natural justice. A writ of certiorari can also be issued if it is shown that while passing the order under challenge the Subordinate Court, Tribunal or quasi-judicial authority

ignored legally admissible evidence or took into consideration inadmissible evidence or overlooked relevant material or the order is based on extraneous consideration/factors. However, a writ Court cannot sit in appeal over the orders of the Subordinate Court, Tribunal or quasi-judicial authority and interfere with the findings and conclusions recorded by such Court, Tribunal or Authority merely because on a re-appreciation of evidence different finding or conclusion is possible. The writ Court cannot go into sufficiency and adequacy of evidence which may have been relied by the Subordinate Court, Tribunal or quasi-judicial authority for reaching a particular finding or conclusion – **Syed Yakoob v. K.S. Radhakrishnan**^[1] and **Surya Dev Rai v. Ram Chander Rai**^[2].

We may now advert to Section 21 of the Act, which prescribes the period of limitation. The same reads as under:

21 Limitation:

(1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he has sufficient cause for not making the application within such period.

A reading of the above reproduced provisions makes it clear that the Legislature has prescribed different periods of limitation as also modes for calculating the limitation for filing application in respect of cases in which the cause arose before the commencement of the Act and the cases in which the cause accrued after the commencement of the Act. Sub-section (3) of Section 21, which is general in nature, begins with a non-obstante clause and empowers the Tribunal to admit an application filed after expiry of the period specified in sub-sections (1) or (2), provided that the applicant had sufficient cause for not making the application within the specified period. The expression “sufficient cause” has not been defined either under the Act or under the Central Administrative Tribunal (Procedure) Rules, 1987 (for short, ‘the Rules’). Therefore, the said expression will have to be interpreted keeping in view the other provisions contained in the Act and the Rules.

Section 20 (1) of the Act imposes an embargo on the entertaining of an application unless the Tribunal is satisfied that the applicant had availed all the remedies available to him under the relevant service rules as to redressal of grievances. The expression “service rules as

to redressal of grievances” has been defined in Section 3 (r). It means the rules, regulations, orders or other instruments or arrangements as in force for the time being with respect to redressal, otherwise than under this Act, of any grievance in relation to such matters. This shows that before filing an application under Section 19, the applicant must avail the remedies available to him under the relevant rules, regulations, orders and other instruments, which provide for redressal of his grievance. Therefore, if an application is filed after availing the remedies available under the relevant rules etc., the same cannot be treated as barred by time. In a given case, the Tribunal can also take into consideration the factum of long pendency of representation/petition and condone the delay by exercising power under Section 21 (3). However, once the representation is rejected, the aggrieved employee cannot go on making successive representations and then seek condonation of delay by invoking Section 21 (3). In **S.S. Rathore v. State of M.P.**^[3], the Supreme Court interpreted Sections 20 and 21 of the Administrative Tribunals Act, 1985 and observed:

“The question for consideration is whether it should be disposal of one appeal or the entire hierarchy of reliefs as may have been provided. Statutory guidance is available from the provisions of sub-sections (2) and (3) of Section 20 of the Administrative Tribunals Act. There, it has been laid down:

“20.(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,—

(a) if a final order has been made by the government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the government or other authority or officer or other person competent to pass such order with regard

to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.”

We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months’ period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The civil court’s jurisdiction has been taken away by the Act and, therefore, as far as government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits out side the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the head of the establishment shall not be taken into consideration in the matter of fixing limitation.”

The ratio of the above noted judgment is that rejection of the

successive representations cannot be taken into consideration for exercising power under sub-section (3) of Section 21.

In **Commr. of Public Instructions v. K.R. Vishwanath**^[4], the Supreme Court interpreted Rule 5 of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 under which limitation of one year is prescribed for filing application for compassionate appointment and held:

“A bare reading of the second proviso makes the position clear that unless the application is pending at the time of commencement of the Amendment Rules, the same can have no application. If the second proviso has no application, then the question of any subsequent application being considered does not arise. The provision is clear and unambiguous. That being so, there was no scope for introducing a concept of condonation of delay as has been done by the Tribunal and the High Court. If the view is accepted it would mean that a belated application will be deemed to have been done within time. That would be in effect introducing a deeming provision by interpretative process which is not permissible.”

By applying the ratio of the above noted cases to the facts of this case, we hold that the Tribunal did not commit any illegality by refusing to entertain the petitioner's prayer for condonation of delay and we do not consider it proper to interfere with the order under challenge simply because it is possible for this Court to take a different view.

The issue deserves to be considered from another angle. In **Umesh Kumar Nagpal v. State of Haryana**^[5], **State of Haryana v. Rani Devi**^[6], **Commr. of Public Instructions v. K.R. Vishwanath** (supra), and **State of J & K v. Sajad Ahmed Mir**^[7], the Supreme Court has repeatedly held that an application for compassionate appointment must be made within the prescribed period and the appointing authority is not obliged to appoint the dependant of the deceased employee if there is unusual delay in making the application.

In the present case, we find that the petitioner's father had died

on 7-7-1996. By the time of filing the second O.A., a period of more than nine years had elapsed. Therefore, at that belated stage, the Tribunal was, notwithstanding the fact that the first O.A. filed by him was disposed of on 23-6-2003 by directing fresh consideration of his case, justified in declining his prayer for condonation of delay.

The orders passed by the coordinate Benches in **D. Samuel Johan v. General Manager, SC Railways, Secunderabad and others** (supra) and **C.S. Ranganatha Rao v. The Asst. Divisional Mechanical Engineer (Carriage & Wagon), South Central Railway, Secunderabad Division, Secunderabad and others** (supra) on which reliance has been placed by the learned counsel shows that those cases were decided on their own facts and no proposition of law was laid down by interpreting the provisions of the Act. Therefore, those orders cannot be treated as binding precedents for the purpose of granting relief to the petitioner.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP No.34694 of 2006 filed by the petitioner for fixing a date for early hearing of the writ petition is disposed of as infructuous.

G.S. SINGHVI, C.J.

12th March, 2007

C.V. NAGARJUNA REDDY, J.

svs

[\[1\]](#) AIR 1964 SC 477

[\[2\]](#) AIR 2003 SC 3044

[\[3\]](#) (1989) 4 SCC 582

[\[4\]](#) (2005) 7 SCC 206

[\[5\]](#) (1994) 4 SCC 138

[\[6\]](#) (1996) 5 SCC 308

[\[7\]](#) (2006) 5 SCC 766 and